

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM ROWELL)	
)	
Plaintiff,)	Case No. 2008 CV 2517
)	
v.)	Judge Castillo
FRANCONIA MINERALS CORPORATION)	Magistrate Judge Brown
a foreign corporation)	
)	
Defendant.)	
)	

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S SECOND
AMENDED COMPLAINT ON THE BASIS OF *FORUM NON
CONVENIENS* AND PURSUANT TO RULE 12(b)(6)**

Defendant, Franconia Minerals Corporation (hereafter “Franconia”) states as follows in support of its Motion to Dismiss Plaintiff’s Second Amended Complaint On The Basis Of *Forum Non Conveniens* And Pursuant to Rule 12(b)(6):

1. In response to Franconia seeking dismissal on the basis of *Forum Non Conveniens* [Docket #22], Plaintiff filed a Second Amended Complaint [Docket #35]. The Second Amended Complaint purports to plead around the contractually agreed upon application of Alberta and Canadian law by: (1) agreeing (on page 15) to waive certain (but far from all) damages/claims if the Court concludes that Canadian law applies and (2) adding additional claims which Plaintiff alleges are governed by Washington law, including a fraud claim.

2. This entire dispute still warrants resolution in Canada. The Plaintiff and Defendant are both Canadian citizens, this dispute involves stock options in a Canadian corporation whose stock is traded on the Toronto Stock Exchange, the parties agreed to apply Canadian/Alberta law in four of the five contracts attached to the Second Amended

Complaint, and the disputed meeting which led to this lawsuit took place in Toronto, Canada.

3. In light of Plaintiff's effort to plead in domestically-based claims, Franconia has filed the attached Memorandum of Law to demonstrate to the Court that those claims have no merit and should not save this case from being resolved in Canada. As set forth in the attached Memorandum of Law, to the extent that Washington law applies to any of Plaintiff's claims (one of the five contracts attached to the Second Amended Complaint calls for application of its law), Washington law mandates dismissal of those claims with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

WHEREFORE, Defendant respectfully requests that the Second Amended Complaint be dismissed and for such other relief as the Court deems appropriate.

Dated July 10, 2008

FRANCONIA MINERALS CORPORATION

By: /s/ David J. Fish
One of its Attorneys

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